NOTES ON WORKMEN'S COMPENSATION

CONFERENCE OF STATE COMMISSIONS.—On November 10-12, 1910, representatives of the several state commissions which have been investigating the subject of compensation for industrial accidents met at Chicago for a conference. Delegates were present from New York, Wisconsin, Ohio, Minnesota, Illinois, New Jersey, Montana and Massachusetts. There were also representatives of the Federal Commission, United States Bureau of Labor, and a special committee of commissioners on uniform state laws, together with a special delegate appointed by the Governor of Connecticut. The public and newspaper correspondents were excluded from the meeting. A full stenographic report, however, of the several sessions of this congress has now been published, and from this it is possible to secure abundant information in regard to the various questions which are at issue. A note on its contents may be found on page 115. An abstract is also published in the *Bulletin* of the United States Bureau of Labor, for September, 1910.

WASHINGTON.—The Commission of the State of Washington made its report to Governor Hay on December 30, 1910, and submitted a bill.[1]

The proposed Washington Act abrogates the doctrine of negligence as between employer and workman; removes the subject from the domain of private controversy; asserts and assumes the subject to be within the police power of the State; and deprives the courts of jurisdiction in the premises, except in the administration of the act. There are certain exceptions: (1) Where the injury was caused by the intent of the employer to produce it; (2) Where the injury is caused by the intent of the workman to produce it; and (3) Where the employer upon demand refuses to contribute to the fund for the creation of which provision is made in the act. In the case of (1) the workman takes under the act and may sue the employer for any excess of damage over the amount received under the act. In the case of (2) the workman receives nothing under the act. In the case of (3) the employer is suable at law, the defenses of fellow workman and assumption of risk abolished, and the doctrine of comparative negligence established.

[1] *Report of Commission Appointed by Governor M. E. Hay to Investigate the Problems of Industrial Accidents and to Draft a Bill on the Subject of Employees' Compensation.* Olympia, Washington. 1910. Pp. 48.

The act applies only to occupations defined in the act as "extra hazardous." There are two funds provided for by the act: the first aid fund, and the accident fund. The first aid fund is created by the monthly payment into the State treasury by each employer of four cents per day for each day's work done for him during the preceding month. Of this he deducts two cents from the wages of the workmen. Out of this fund all injured workmen receive the necessary medical, surgical and hospital attendance so long as required, and also for the first three weeks of incapacity $5.00 per week. The accident fund is created by the payment into the State treasury by each employer of a certain percentage of his annual payroll, the percentage varying with the degree of hazard inherent in the occupation. It is paid annually in advance, calculated upon the past year's payroll; if there is none such, upon an estimated payroll. The department may permit the payment to be made in quarterly instalments. At the end of the year an adjustment is to be made. Undue carelessness upon the part of any employer may result in the increase (for future application) of his rate of contribution. At the end of each year there is an accounting with each class of industries, and if it proves to have paid in too much the excess is refunded; but, on the other hand, if too little, the deficiency is made good upon the same basis as the original contribution.

Out of the accident fund cases of death or incapacity over three weeks are cared for. Permanent partial injuries are compensated in lump sum payments, $1,500 being the maximum amount, and the loss of a major arm at or above the elbow, the maximum injury. Lesser permanent partial injuries are compensated in proportion. All other cases are compensated in monthly payments. These may be converted, in whole or in part, into lump sum payments in the discretion of the department, the previous application of the beneficiary being necessary, except where the beneficiary removes from the State. The amount of the lump sum payment may be settled by agreement between the beneficiary and the department within a certain limitation, to wit: That a payment of $20 per month to a person 30 years of age is worth $4,000, each settlement being based upon the expectancy of life upon the American Mortality Tables. The monthly compensation is all at flat amounts. The earning power is not taken into consideration (except in one case hereinafter referred to). In death cases funeral expenses not to exceed $75 are paid. If the decedent was unmarried and had no dependent, no further payment is made. A dependent is a relative (among an enumerated list) who was receiving actual pecuniary assistance from the decedent prior to his

death (he having been unmarried at the time of his death). Such a dependent receives monthly one half of one twelfth of the amount of pecuniary assistance actually rendered the dependent by the decedent during the year preceding the accident. If the decedent left a widow she receives $20 a month as long as she shall live unmarried. Upon remarriage she receives twelve monthly payments and no more. The widow receives $5 extra per month for each child, not to exceed $15 per month. If orphan children survive they receive $10 per month each, not to exceed $35 for all of them. Payments to or on account of a child cease when the child becomes 16 years of age. If the workman survives the accident and is permanently, totally incapacitated he receives, if unmarried, $20 per month so long as the total incapacity continues. If married, he receives $5 per month extra and $5 per month extra for each child, the total not to exceed $35 per month (and the payment on account of any child ceasing at the sixteenth birthday). If the incapacity is only temporary, the same monthly payments are made, increased for the first six months 50 per cent, provided the increase shall not operate to make the monthly payment exceed 60 per cent of the monthly wage. As long as the injured workman is able to make earnings in any way the monthly payment is scaled down accordingly.

If the accident is brought about because of the absence of any safeguard or protective device required by statute or ordinance, or by public regulation under any statute, the employer is required to pay into the fund 50 per cent of the payment made out of the fund on account of the injury, if he is responsible for the absence of the safeguard. Whereas, if the workman is responsible for its absence, his compensation is reduced 10 per cent.

A State Department is created to administer the act, composed of three commissioners appointed by the governor. The legislature appropriates $150,000 out of the general fund to pay the operating expenses of the department until the next legislative session. Except as to a few matters left discretionary with the department, appeal lies to the courts from the decision of the department at the instance of any person feeling aggrieved, such appeal to be only upon questions of fact or proper construction of the act. The proceeding is informal and summary; jury trials being provided only in cases arising under the penalizing provisions of the act. If the department ruling is reversed or modified the proper fund must bear the expense of the litigation, including the attorney's fee to be fixed by the court.

The intent is declared that the fund shall be no more and no less

than self-supporting. Every dollar paid in by employers must go to injured workmen, except in case the expense appropriation should run out between sessions, in which case the deficit is made good, 85 per cent out of the first aid fund and 15 per cent out of the accident fund. The State Treasurer is required to keep the funds invested at interest in the class of securities provided by law for the investment of the permanent school fund, and any uninvested funds are to be kept on deposit at interest on daily balances in such banks as have been approved by the State Board of Finance.

In order that each year may provide for its own expenses the State Treasurer is required, as soon as the liability of the fund is determined in any individual case, to segregate from the fund the amount necessary (subject to the $4,000 maximum) to take care of that case and keep it invested, as above stated, being privileged to borrow from the general fund for that case moneys necessary to meet monthly payments, pending a conversion into cash of a security belonging to the case.

HAROLD PRESTON.

Seattle, Washington.

WISCONSIN.—In Wisconsin the special joint committee on industrial insurance of the 1909 legislature made its report to Governor McGovern the first of this year. Its bill, which provides for an optional compensation system, was introduced into the Senate on Jan. 17, and the complete report with various statistical tables is now available.

The proposed Wisconsin measure is optional in theory. It absolutely abrogates the common law defenses of fellow servant's negligence and assumption of risk and, in the light of recent Wisconsin supreme court decisions, somewhat modifies the defense of contributory negligence. The theory of the committee appears to be that the abrogation of these defenses will act as an inducement to manufacturers to elect to come under the compensation portion of the measure. The election by the employer to accept the terms of the act presupposes the employee's election to accept the compensation scheduled, but the employee is given his constitutional right to elect within thirty days after his employer's election, to stand on his common law rights. The automatic waiver by the employee of his common law rights, of course, applies to his widow and dependents.

The schedule of compensation is substantially as follows:

Death: Four years' computed wages with a maximum of $3,000 and minimum of $1,500; payment to be made to dependents in instalments instead of a lump sum.

Temporary disability: 65 per cent of wages; payment to begin after seventh day of disability and the first week's indemnity to be paid only if the disability period extends to the twenty-ninth day.

Permanent partial disability: 65 per cent of the loss in wages, these payments, however, not to continue more than fifteen years.

Free medical and surgical attendance is to be given in all cases for not more than ninety days.

The maximum in death cases applies to all cases of injury, the 65 per cent of wages being continued until the aggregate reaches the death maximum. Provision is made for those cases in which the victim of an accident dies from a cause not traceable to the original injury.

Disputes over compensation under the act are to be submitted to an Industrial Accident Board of three members. This board is to have the power to employ enough examiners and deputies to enable it to investigate and pass upon disputes without delay. Provision is made, of course, for appeals to the courts, but it is believed that few cases will go higher than the board.

Employers who come under the Wisconsin Act are left free to cover the risk as they see fit so long as the compensation paid to an employee or his dependents is in accordance with the compensation scale.

PAUL J. WATROUS.

Madison, Wisconsin.

MASSACHUSETTS.—In Jaunary, 1904, a commission of which Carroll D. Wright was chairman recommended the passage of a compensation act to provide for the victims of industrial accidents. The bill failed to pass, however, and in spite of the efforts of the labor representatives who have re-introduced the measure every year since 1904, the matter stands today just where it did seven years ago.

In June, 1910, another commission of five members was appointed for the special and sole study of this matter. The committee was made up of two members of the legislature and three outsiders. Two of the members were employers, one represented organized labor, and the other two were lawyers who, by reason of professional training and legislative experience, were considered to be especially well equipped for this problem.

By the terms of the resolve the commission was instructed to make a careful investigation of the laws of other states and countries and to report a bill to the legislature in January, 1911.

On December 17, the commission published a tentative draft of a bill for public discussion and criticism. This bill in general conforms

fairly closely to the English act and does not vary greatly from that proposed by the Carroll D. Wright Commission in 1904. It covers all employments; but employers who have not more than five persons in their service are exempt from its operation. It limits the operation of employers' liability law to those persons not covered by this act so long as it may be in force, and provides for an irrevocable choice by the injured employee or his legal represetative between the act itself and the common law as a means of securing redress in case of personal injuries.

The scale of compensation is as follows: In case death results from the injury, dependents wholly dependent upon the injured employee for support at the time of the accident are to receive 50 per cent of the average weekly wages of the deceased, but not more than $10 nor less than $4 a week, for a period of 300 weeks. Partial dependents are to receive a proportion of such weekly compensation, based upon the degree of their dependency. If no dependents are left, medical attendance and funeral expenses not to exceed $200 are to be provided. In case permanent total disability results from the accident, the injured employee is to receive a weekly compensation of 50 per cent of his wages, not more than $10 nor less than $4 a week, for a period of not more than 300 weeks. If the disability is only partial the weekly compensation is not to exceed 50 per cent of the difference between earnings before and after the accident.

In case of temporary disability, the same scale of benefits is provided during disability, if such disability does not continue beyond 300 weeks from the date of injury.

In all cases of disability a waiting period of two weeks is provided, during which, however, the employer must furnish necessary surgical or hospital treatment for the injured employee.

The bill makes it possible for the employer and his employees to contract out of the provisions of the act if they can agree upon a scheme of insurance or compensation which carries benefits equally advantageous to the employee, and if it meets with the approval of the Industrial Accident Board in whose hands is placed the execution of this law.

This Industrial Accident Board is a unique feature which is not contained in the English model. It is to be made up of three members appointed by the governor, and its primary functions are to take charge of agreements and the arbitration of disputes under the act.

In one other respect this bill is a distinct improvement on the English act. It provides for no lump sum settlements and permits the

commutation of weekly payments only under extraordinary circumstances, and with the consent of the Industrial Accident Board.

The commission was not satisfied with this bill when it was submitted for discussion, and its doubts in regard to the expediency of some of the provisions contained therein have been so abundantly justified by the pronounced opposition developed since the draft was published, that it decided not to recommend the measure to the legislature. The commission accordingly made a partial report to the legislature on January 11, and asked for further time.

This recommendation is based upon several considerations. The most important are: The possibility of securing uniformity of legislation in the several states now considering the matter; the utilization of valuable sources of information in regard to the operation of the various foreign laws, which will soon be available; the gathering of full reports of accidents in the Commonwealth for a year as a basis for estimating the cost of any system which may be proposed; and finally, the necessity of securing the coöperation of employers and employees. The commission feels that existing opposition which is especially strong on the part of employers can be largely overcome by further study. It does not hope to draft a perfect measure, but it is desirous of laying a foundation which will be safe and capable of modification to meet future conditions. It is still an open question whether the English scheme meets these requirements, and whether such a plan can be properly safeguarded by insurance, without undue cost, so as to guarantee payments to injured employees and to protect the employer against overwhelming losses.

C. W. Doten.

Illinois.—An act passed March 4, 1910, provided for an Employers' Liability Commission. This was made up of six employers of labor, and six persons who are either employees or are known to represent the interests of workmen. The law instructed the commission to investigate the problems of industrial accidents, and especially the present conditions of the law of liability for injuries or death suffered in the course of employment. The commission was further required to report its conclusions to the governor and to make recommendations for the amendment of the existing laws.

Unfortunately, the commission, although it made a thorough investigation of many matters, was unable to agree on a report to present through the governor to the legislature. As the report states: "Two of the labor members of the commission refuse to consider any other

plan than a liability bill. Four members representing labor, while conceding the wisdom of the compensation enactment, were unable to agree with the members representing the employers as to the terms of the bill." (*The Report of the Employers' Liability Commission of the State of Illinois.* Chicago, 317 Fisher Building. 1910. Pp. 317.)

DOCUMENTS AND REPORTS

Industries and Commerce

The *Address of President Taft before the National Conservation Congress,* September 5, 1910 (Washington, pp. 22), is a comprehensive analysis of the public land question, clearly showing the relations of the several parts of the subject. The discussion is treated under the heads of agricultural lands, mineral lands, forest lands, coal lands, oil and gas lands, and phosphate lands. The *Thirty-First Annual Report of the Director of the Geological Survey* (Washington, 1910, pp. 131), also contains data showing the progress in land classification, with an account of investigations in regard to water resources. Further information in regard to the public coal lands may be found in the report of the majority of the congressional committee, appointed to investigate the charges made against Secretary Ballinger. (Washington, pp. 87.)

The Superintendent of Documents has issued the third edition of a price list of United States public documents relating to *Lands,* and more particularly to the public domain. (Washington, pp. 39.)

Forest Service Circular 181 (Washington, Department of Agriculture, pp. 7), gives statistical data in regard to *The Consumption of Firewood in the United States.* The returns are based upon special inquiries sent to 48,000 correspondents. It is estimated that of 20 billion cubic feet of wood of all kinds used each year, seven billion cubic feet is firewood.

The Daily Consular Trade Report, for January 19, 1911 (Washington, Bureau of Manufactures), contains an eight-page article on the cotton industry of Great Britain, in which there are notes in regard to methods of marketing and shipment, and the Brooksland agreement for settling disputes as to wages.

The history of the *Grain Movement in the Great Lakes Region* is summarized by Mr. Frank Andrews in Bulletin 81 of the Bureau of Statistics of the Department of Agriculture (Washington, Nov. 18,